

CAUTION: The following advice may be based on a rule that has been revised since the opinion was first issued. Consequently, the analysis reflected in the opinion may be outdated.

IC 4-2-6-11

A former DNR employee sought to work as a lobbyist in the Indiana General Assembly following his employment with the state. SEC found that the employee was not subject to the one-year "cooling off" period found in the Post Employment rule since the restrictions in EO 05-12(8), the rule that was in place when the former employee ended his employment with state government, only applied to executive branch lobbyists.

No. 05-I-11 POST EMPLOYMENT RESTRICTION

State Ethics Commission
Official Advisory Opinion
September 8, 2005

Background

A former state employee was previously employed by the Indiana Department of Natural Resources (DNR) and represented DNR in the General Assembly in 2001, 2002, and 2003. In 2004, he served as the Director of Legislative Relations for the Indiana Department of Local Government Finance (DLGF). He continued to serve DLGF for seven weeks in 2005, resigning effective February 25, 2005.

Issue

Does the post-employment restriction in Executive Order 05-12 and subsequently IC 4-2-6-11 prohibit the former state employee from working as a lobbyist in the Indiana General Assembly prior to February 25, 2006?

Relevant Law

Executive Order 05-12

8. No state officer, employee, or special state appointee who leaves state government after January 10, 2005 shall accept employment or receive compensation for one year:
 - a. as a lobbyist engaged in lobbying the executive or legislative branches of state government in Indiana;
 - b. from an employer if the former officer, employee, or special state appointee was engaged in the negotiation or administration of one or more contracts with that employer or in a position to make a discretionary decision affecting the outcome of the negotiation or administration of such a contract; or
 - c. from an employer if the former officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to

the employer or to a company that controls, is controlled by, or is under common control with, the employer.

Post Employment Restrictions: (effective May 11, 2005)

IC 4-2-6-11 (b) This subsection applies only to a person who served as a state officer, employee, or special state employee after January 10, 2005. A former state officer, employee, or special state appointee may not accept employment or receive compensation:

(1) as a lobbyist (as defined in IC 4-2-7-1);

(2) from an employer if the former state officer, employee, or special state appointee was:

(A) engaged in the negotiation or the administration of one (1) or more contracts with that employer on behalf of the state or an agency; and

(B) in a position to make a discretionary decision affecting the:

(i) outcome of the negotiation; or

(ii) nature of the administration; or

(3) from an employer if the former state officer, employee, or special state appointee made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer;

before the elapse of at least three hundred sixty-five (365) days after the date on which the former state officer, employee, or special state appointee ceases to be a state officer, employee, or special state appointee.

(c) A former state officer, employee, or special state appointee may not represent or assist a person in a particular matter involving the state if the former state officer, employee, or special state appointee personally and substantially participated in the matter as a state officer, employee, or special state appointee, even if the former state officer, employee, or special state appointee receives no compensation for the representation or assistance.

(d) A former state officer, employee, or special state appointee may not accept employment or compensation from an employer if the circumstances surrounding the employment or compensation would lead a reasonable person to believe that:

(1) employment; or

(2) compensation;

is given or had been offered for the purpose of influencing the former state officer, employee, or special state appointee in the performance of his or her duties or responsibilities while a state officer, an employee, or a special state appointee.

(e) A written advisory opinion issued by the inspector general certifying that:

(1) employment of;

(2) representation by; or

(3) assistance from;

the former state officer, employee, or special state appointee does not violate this section is conclusive proof that a former state officer, employee, or special state appointee is not in violation of this section.

Conclusion

The former state employee left state government while Executive Order 05-12 was in effect. Paragraph 8 of that Order prohibits lobbying the executive or legislative branch of state government within one year of leaving state employment.

On May 11, 2005, paragraph 8 of the Executive Order ceased to control the issue of post-employment restrictions. On that date, IC 4-2-6-11 became effective. This statute changes the limitation concerning lobbying. In IC 4-2-6-11, the prohibition against lobbying the General Assembly is lifted. Only executive branch lobbying is restricted. Accordingly, there is no post-employment prohibition against the former state employee lobbying the legislative branch of state government.